

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Application of)	MM Docket No. 93-298
)	
DAVID LEE COMMUNICATIONS, INC.)	
)	
For Renewal of License of)	
Station WTRX(AM), Flint, Michigan)	

MOTION FOR SUMMARY DECISION

David Lee Communications, Inc. ("David Lee"), by its attorneys, hereby moves for summary judgement of the issues raised in the *Hearing Designation Order*, released November 30, 1993 in MM Docket No. 93-298 (*HDO*). In support of which the following is shown:

The *HDO* raised three issues against David Lee:

- (a) To determine whether David Lee Communications, Inc. has the capability and intent to expeditiously resume broadcast operations of WTRX(AM) consistent with the Commission's Rules.
- (b) To determine whether David Lee Communications, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.
- (c) To determine, in light of the evidence adduced pursuant to the preceding issues, whether grant of the subject renewal of license application would serve the public interest, convenience and necessity.

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BACKGROUND

David Lee is the licensee of WTRX (AM), Flint Michigan. On August 20, 1990, WTRX ceased operations. On September 10, 1990 David Lee notified the Commission that the station was silent and requested permission to suspend operations.¹ By letter of October 29, 1990 the Mass Media Bureau ("MMB") granted David Lee Special Temporary Authority ("STA") to remain silent through November 30, 1990. On November 26, 1990 David Lee again requested permission to remain silent for an additional 120 days, which the MMB granted on December 19, 1990. During the years 1991 and 1992, each time David Lee requested additional time to remain silent the MMB granted the request. At no time did David Lee allow its STA to lapse. In each instance a request for additional authority was filed before the previous STA was due to expire. Usually, the MMB did not issue a letter granting further authority to remain silent until sometime after the previous STA had expired.

For example, David Lee by letter dated September 25, 1992 was granted authority to remain silent until December, 25, 1992. On December 18, 1992 the David Lee again requested authority to remain

¹ Correspondence between David Lee and the MMB reference in this motion is attached hereto as Exhibit 1.

silent. In response, on January 29, 1993, the MMB granted David Lee authority to stay silent until April 29, 1993. On April 13, 1993, David Lee again request an extension of its authority to remain silent. The MMB by letter dated April 30, 1993 asked that David Lee provide additional information so that the MMB could "determine if additional silent authority is justified." David Lee replied to the MMB's letter on June 3, 1993. There was no further correspondence or communications between David Lee and the MMB.

On November 3, 1993 the *HDO* was released.

On January 19, 1994 David Lee and Saginaw Bay Broadcasting Corporation ("SBBC") entered into a Time Brokerage Agreement. (Attached hereto as Exhibit 2)

On January 27, 1994 David Lee filed a request for STA to commence broadcast operations on WTRX. By letter dated January 28, 1994 the MMB granted David Lee's request.

WTRX (AM) commenced regular broadcasts at 6 AM on February 2, 1994.²

² Exhibit 3 contains several newspaper articles about WTRX, written about the time the station signed back on the air.

DAVID LEE'S ABILITY TO BROADCAST

HDO issue (a) seeks to determine whether David Lee has the capacity and intent to **resume** broadcast operations. Since the *HDO's* release, WTRX has commenced regular broadcast operations. WTRX is currently operating pursuant to the terms of Time Brokerage Agreement. The Agreement is for a term of one year with SBBC having the option to renew the Agreement for up to two additional one year terms. David Lee Schuehrer, President and sole shareholder of David Lee is committed to keeping WTRX on the air. Should SBBC fail to renew the Agreement for an additional term or not perform pursuant to the terms of the existing Agreement, Mr. Schuehrer is prepared to step in and personally finance the continue operation of the station. (Attached as Exhibit 4 is the Declaration of David Lee Schuehrer)

WTRX is currently on the air. Its prospects of staying on the air in the future are very good. Accordingly, issue (a) should be resolved in David Lee's favor.

DAVID LEE DID NOT VIOLATE THE FCC'S RULES

Issue (b) whether David Lee violated Section 73.1740 or Section 73.1750 should be resolved in David Lee's favor. Section 73.1740 requires that all commercial broadcast stations operate not less than a specified number of hours per day. Stations that cannot adhere to a

minimum operating schedule are required to notify the Commission when a station discontinues operations. If the station cannot resume a minimum broadcast schedule within thirty days it is required "no later than the 30th day" to request additional time. In each case prior to the expiration of the previous authority, David Lee requested additional time to stay dark. At no time did the Commission deny David Lee's request.

On April 30, 1993, the MMB requested additional information, which David Lee provided. The MMB did not respond to David Lee's letter. Under the circumstances, David Lee believed the MMB was continuing to evaluate his last STA request.

Generally, when a Commission licensee or permittee makes a timely application concerning the status of its license or permit, the license or permit will not expire until the Commission has finally acted on the application. See, 5 USC §558 (c) (2). For example, if a permittee timely files an extension application, a construction permit will not expire until the Commission makes a final determination. In this case David Lee timely filed an extension application in accordance with the requirements of Section 73.1740. Accordingly, David Lee did not violate Section 73.1740.

Nor did David Lee violate Section 73.1750 of the Commission's Rules. That section requires that a licensee notify the Commission of its intent to permanently discontinue operations. As is evidenced by the previous discussion, at no time did David Lee intend to permanently cease broadcasting. At all times David Lee had an STA or an application pending for an STA.

Accordingly, Issue (b) should be resolved in David Lee's favor.

WTRX'S RENEWAL APPLICATION SHOULD BE GRANTED

WTRX is back on the air. Significant funds were spent to make the necessary repairs and improvements to permit WTRX to commence broadcasting again. Currently, operating funds are being provided pursuant to the terms of a Time Brokerage Agreement. David Lee Schuehrer, David Lee's President and sole shareholder has committed his personal resources, should they be required, to insure that WTRX stays on the air.

David Lee's counsel has spoken with counsel for the MMB. David Lee will not oppose a request from the MMB for a short term renewal.

CONCLUSION

David Lee respectfully requests that the Presiding Judge resolve the designated issues in favor of David Lee.

Respectfully submitted,

DAVID LEE COMMUNICATIONS, INC.

By: 

Arthur V. Belendiuk
Its Attorney

SMITHWICK & BELENDIUK, P.C.

1990 M Street, N.W.

Suite 510

Washington, D.C. 20036

(202) 785-2800

February 25, 1994

LPD/WTRX/MTNSUM.DEC

EXHIBIT 1

September 10, 1990

Federal Communications Commission
1919 M Street N.W.
Room 342
AM Branch
Washington D.C. 20554

Re: AM Radio Station WTRX (formerly WDLZ)
Genesee County Michigan

Dear Madam/Sir:

Be advised that at approximately 6pm on August 20, 1990 the AM radio station noted above, ceased operations due to circumstances which were beyond the control of the Board of Directors of the owner of the subject station and the holder of the license, to wit, David Lee Communications, Inc.

Pursuant to my understanding of Federal Communication Commission procedures relative to such matters, we were allowed to close the station for no more than 30 days without corresponding with you and requesting additional time, during which the station would be permitted to suspend it's operations. Please consider this letter as a request for permission to suspend operations for an additional 120 days.

The reasons for this request relate to financial difficulties under which the station had been operating, which are related to the format utilized, which has been abandoned. Reorganization, re-staffing, and refinancing are all being explored/pursued. The time extension requested is deemed necessary to accomplish the desired "end goal" of opening the station once again.

Should you have any questions or concerns, please do not hesitate to contact me directly.

Very truly yours,

STEVEN P. IAMARINO
Corporate Secretary and Legal Counsel

SPI/

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

NOV. 02 1990

IN REPLY REFER TO:

October 29, 1990

Steven P. Iamarino, Esquire
Radio Station WTRX(AM)
c/o Wascha, Iamarino and Waun
10751 South Saginaw Street, Suite D
Grand Blanc, MI 48439

Ref. 8910-MCW. Relet. Atty. Iamarino 9/10/90. Temporary authority granted to WTRX(AM), Genesee County, Michigan to remain silent thru 11/30/90, to allow time to reorganize, re-staff and refinance station. Any further requests for extension of this authority must be accompanied by a detailed showing of steps taken to return station to air. It will be necessary to maintain prescribed tower lighting.

James R. Burtie
Chief, AM Branch
Audio Services Division
Mass Media Bureau, FCC

Mickey Williams
Mickey Williams
Comm. Analyst

EIC-Detroit

MW:afr/asd/mmb/wtrx
(1)

DAVID LEE COMMUNICATIONS, INC.
6-3458 W. Bristol Road
Flint, Michigan 48507
(313)-232-2670

November 26, 1990

Mickey Williams, Comms. Analyst
Federal Communications Commission
Washington, D.C. 20554

RE: Radio Station WTRX (AM)

Dear Sirs:

Please accept this letter as our request for an extension of our existing authority to remain silent for additional 120 days, until March 30, 1991.

In accordance with your letter dated October 29, 1990, we submit the following for your consideration.

We have sought the input of a number of individuals with industry experience relative to available talent, format possibilities, and market analysis for the station.

We have discussed and interviewed, with no less than three individuals, the possibility of fulfilling the role of General Manager of the station. We feel that this role is pinnacle in any other decision with regard to format possibilities and other staff positions.

In all of these discussions, we have evaluated a number of format possibilities which would utilize local talent, satellite fed talent, and/or a combination of the two.

In the interim, we have received and entertained proposals from five different parties, which involve the investment possibility the station possesses in a potential partnership scenario, as well as the out-right purchase of the station. These proposals are being considered as an alternative to conventional financing through our banking relationships.

Because the needs of the market are currently in a state of flux, and because the possibility of new investors, which came rather unexpectedly, has arisen, we respectfully request this additional time of 120 days to continue to evaluate the best course of action for the station.

DAVID LEE COMMUNICATIONS, INC.

Mickey Williams, Comms. Analyst
November 20, 1990
Page 2.

Be assured that we have maintained, and will continue to maintain the prescribed tower lighting.

We appreciate your consideration in this matter. If you should require any additional information, please do not hesitate to contact Steven P. Iamarino, 2467 E. Hill Road, Suite B, Grand Blanc, Michigan 48439, telephone number (313)-695-8400.

Respectfully,
David Lee Communications, Inc.



David L. Schuehrer
President

cc: Steven P. Iamarino, Esq.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN REPLY REFER TO:

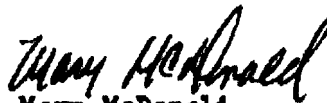
December 19, 1990

David Lee Communications, Inc.
Radio Station WTRX
G-3458 W. Bristol Road
Flint, Michigan 48507

Attn: David L. Schuehrer

Ref. 8910-MM. Relet Schuehrer 11/26/90. Temporary authority granted to WTRX(AM), Genessee County, MI to remain silent thru 3/25/91 pending resolution of financial, and staffing problems. Any further request for extension must be accompanied by a detailed report of specific steps taken to resume operation. It will be necessary to maintain prescribed tower lighting.

James R. Burtle
Chief, AM Branch
Audio Services Division
Mass Media Bureau


Mary McDonald
Comms. Analyst

BIC- Detroit

cc: Mr. Stephen P. Iamarino, Esq.

**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
September 25, 1992**

IN REPLY REFER TO:
8910-SML

David L. Schuehrer
G-3458 W. Bristol Road
Flint, Michigan 48507

In re: WTRX (AM)
Genesee County, MI

Dear Sir or Madame:

This letter concerns your pending request for authority to remain silent. Temporary authority is hereby granted for the above-referenced station to remain silent through December 28, 1992.

On December 11, 1991, the Commission adopted a Report and Order (copy attached) which amended Part 1 of the Commission's Rules, to implement Section 5301 of the Anti Drug Abuse Act of 1988. Pursuant to the Report and Order, any requests for extension of this authority must be accompanied by a certification that neither the applicant nor any party to the request is subject to a denial of Federal benefits under Section 5301. Please use the attached certification page to comply with this requirement.

Any further requests for extension of this authority must be accompanied by a detailed summary of steps taken to return the station to on-air operations. It will be necessary to maintain prescribed tower lighting in accordance with the stations license authorization. If an extension is not required, you are requested to notify the Commission, in writing, of the exact date the station resumes on-air operations.

In the event that any AM station remains silent for a period over 6 months, it will be necessary to file with the Commission, prior to returning the station to on-air operations, an FCC Form 302 for direct measurement of power which should include a partial proof of performance for stations with directional antennas.

Sincerely,



James R. Burtle
Chief, AM Branch
Audio Services Division
Mass Media Bureau

Attachments

DAVID LEE COMMUNICATIONS, INC.
G-3458 W. BRISTOL ROAD
FLINT, MICHIGAN 48507
(313) 232-4030

December 18, 1992

Mr. James R. Burtle
Chief, an Branch
Federal Communications Commission
Washington, D.C. 20554

RE: 8910-SML'
WTRX (AM)
Genesee County, Michigan

Dear Mr. Burtle:

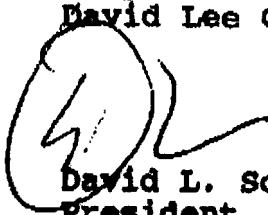
This letter is written to request an extension of our authority for WTRX (AM), to remain silent for an additional 120 days through April 28, 1993.

We are still in the process of working on the financial aspect of returning WTRX to an on air status. We are currently negotiating with several investors in an effort to provide the necessary funding required to return the station to the air.

Please be advised that we are maintaining the prescribed tower lighting in accordance with the station's license authorization and that prior to returning the station to on-air operations, we will notify the commission, in writing, regarding all necessary notices including FCC Form 302. We are enclosing an Anti-Drug Abuse Act Certification as required.

Thank you for your consideration in this matter. If you should have any questions, or if you should require any additional information, please do not hesitate to contact the undersigned.

Respectfully,
David Lee Communications, Inc.



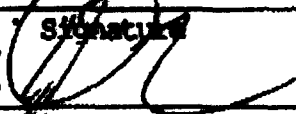
David L. Schuehrer
President

ANTI-DRUG ABUSE ACT CERTIFICATION

The applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862a, or, in the case of a non-individual applicant (e.g. corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. § 1.2002(b).

☒ Yes

☐ No

Name of Applicant	Signature
DAVID L. SCHUEHLER	
Date	Title
12/18/92	PRESIDENT

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20054

January 29, 1993

In Reply Refer To:
8810 - SML
Step Code 180082

David L. Schuehrer
David Lee Communications, Inc.
G-3458 W. Bristol Road
Flint, Michigan 48507

In re: WTRX (AM)
Genesee County,
Michigan

Dear Sir or Madame:

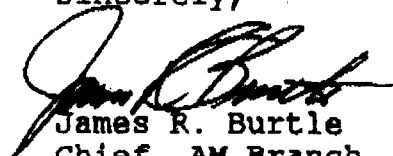
This letter concerns your pending request for authority to remain silent. Temporary authority is hereby granted for the above-referenced station to remain silent for three months from the date of this letter.

On December 11, 1991, the Commission adopted a Report and Order (copy attached) which amended Part 1 of the Commission's Rules, to implement Section 5301 of the Anti Drug Abuse Act of 1988. Pursuant to the Report and Order, any requests for extension of this authority must be accompanied by a certification that neither the applicant nor any party to the request is subject to a denial of Federal benefits under Section 5301. Please use the attached certification page to comply with this requirement.

Any further requests for extension of this authority must be accompanied by a detailed summary of steps taken to return the station to on-air operations. It will be necessary to maintain prescribed tower lighting in accordance with the stations license authorization. If an extension is not required, you are requested to notify the Commission, in writing, of the exact date the station resumes on-air operations.

In the event that any AM station remains silent for a period over 6 months, it will be necessary to file with the Commission, prior to returning the station to on-air operations, an FCC Form 302 for direct measurement of power which should include a partial proof of performance for stations with directional antennas.

Sincerely,



James R. Burtle
Chief, AM Branch
Audio Services Division
Mass Media Bureau

Attachments

DAVID LEE COMMUNICATIONS, INC.
G-3458 W. BRISTOL ROAD
FLINT, MICHIGAN 48507
(313) 232-4030

April 13, 1993

Mr. James R. Burtie
Chief, AM Branch
Federal Communications Commission
Washington, D.C. 20554

RE: 8910-SML
WTRX (AM)
Genesee County, Michigan

Dear Mr. Burtie:


This letter is written to request an extension of our authority for WTRX (AM), to remain silent for an additional 120 days through August 28, 1993.

We are still in the process of working on the financial aspect of returning WTRX to an on air status. We are currently negotiating with several investors in an effort to provide the necessary funding required to return the station to the air.

Please be advised that we are maintaining the prescribed tower lighting in accordance with the station's license authorization and that prior to returning the station to on-air operations, we will notify the commission, in writing, regarding all necessary notices including FCC Form 302. We are enclosing an Anti-Drug Abuse Act Certification as required.

Thank you for your consideration in this matter. If you should have any questions, or if you should require any additional information, please do not hesitate to contact the undersigned.

Respectfully,
David Lee Communications, Inc.



David L. Schuehrer
President

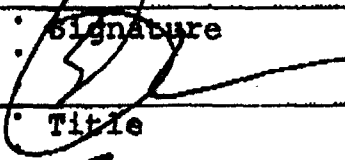
8910-SML
WTRX (AM)

ANTI-DRUG ABUSE ACT CERTIFICATION

The applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862a, or, in the case of a non-individual applicant (e.g. corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. § 1.2002(b).

☒ Yes

☐ No

Name of Applicant	Signature
DAVID L. SCHUEPFER	
Date	Title
4/13/93	PRESIDENT

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
April 30, 1993

In Reply Refer To:
8910 - BML
Stop Code 1800B2

David L. Schuehrer
David Lee Communications, Inc.
G-3458 W. Bristol Road
Flint, Michigan 48507

In re: WTRX (AM)
Genesee County, Michigan

Dear Sir or Madame:

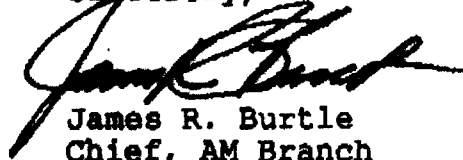
Commission records indicate that AM station WTRX, Genesee County, Michigan, has been silent since 1990, and that you are currently requesting a further extension of that authority. Such requests must always be accompanied by a detailed explanation of the steps that have been taken to return the station to the air. Because of the length of your silent authority, your showing is not sufficient to demonstrate that the station will be ready to resume operation expeditiously.

In order for the Commission to determine if additional silent authority is justified and before a new STA will be granted, you are required to provide a detailed explanation of the specific steps you have taken and plan to take to return your station to the air. This may include, but is not limited to, a marketing plan, proof of listing with a broker, a list of prospective investors or buyers contacted and all other positive efforts made to sell the station.

On December 11, 1991, the Commission adopted a report and order (copy attached) which amended Part I of the Commission's Rules, to implement Section 5301 of the Anti Drug Abuse Act of 1988. Pursuant to the Report and Order, any requests for extension of authority to remain silent must be accompanied by a certification that neither the applicant nor any party to the request is not subject to a denial of Federal benefits under Section 5301. Please use the attached certification page to comply with this requirement.

You are required to provide the aforementioned information within thirty days of the date of this letter. Failure to provide the required information and to provide sufficient justification to warrant an extension of time to remain silent will result in appropriate action by the Commission to terminate your authority to continue as a licensee.

Sincerely,

A handwritten signature in black ink, appearing to read "James R. Burtle", written over the typed name.

James R. Burtle
Chief, AM Branch
Audio Services Division
Mass Media Bureau

Attachments

DAVID LEE COMMUNICATIONS, INC.
G-3458 W. BRISTOL ROAD
FLINT, MICHIGAN 48507
(313) 232-4030

June 3, 1993

Mr. James R. Burtle
Chief, AM Branch
Federal Communications Commission
Washington, D.C. 20554

RE: 8910-SML
WTRX (AM)
Genesee County, Michigan

Dear Mr. Burtle:

This letter is written in response to your letter of April 30, 1993 in which you asked for a detailed explanation of the steps we have taken to return WTRX to the air.

Enclosed you will find a copy of a commitment letter from Republic Bank of Flint, Michigan for a loan on the radio station for \$300,000. These funds will give us the necessary capital to return the station to an on air status. The environmental audit required by the bank is currently in process but is taking some time to complete.

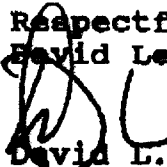
We have discussed the sale of the station with no less than 15 different parties over the last twelve months, but to date we have received no offers to purchase from any of these parties.

We are currently in the process of negotiating a merger with a local station which we expect would, assuming a favorable outcome of the negotiations, would put the station back on air in a relatively short period of time.

It is our belief that this is the last extension that we will require prior to returning the station to an on air status.

If you have any questions or require any additional information, please feel free to contact me.

Respectfully,
David Lee Communications, Inc.


David L. Schuehrer
President


FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
January 28, 1994

IN REPLY REFER TO:
8910-MB
STOP CODE 1800B2

David Lee Communications, Inc.
Radio Station WTRX-AM
3076 East Bristol Road
Burton, MI 48507

This is in reference to attorney letter dated 1/27/94. Temporary authority granted to operate with parameters at variance and/or reduced power while maintaining monitor points within authorized limits pending the completion of a partial proof of performance and the filing of FCC form 302 upon completion of measurements. This authority expires 5/15/94.

James R. Burtle
Chief, AM Branch
Audio Services Division
Mass Media Bureau


May Bradfield
Comms. Analyst

EIC- Detroit
ATTY- Smithwick & Belendiuk

EXHIBIT 2

TIME BROKERAGE AGREEMENT

This Time Brokerage Agreement (Agreement) entered into this day of , 1994 by and between David Lee Communications, Inc. (Lee) licensee of commercial AM station WTRX, operating on frequency 1330 at Flint, Michigan, ("Station"), and Saginaw Bay Broadcasting Corporation (SBBC), licensee of commercial AM station WMAX, operating on frequency 1440 at Bay City, Michigan.

WHEREAS, Lee has available broadcasting time and is engaged in the business of radio broadcasting on the Station; and

WHEREAS, SBBC desires to avail itself of some of Station's broadcast time;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the parties hereto have agreed and do agree as follows:

WITNESSETH:

1. **Facilities.** Lee agrees to broadcast on the Station, or cause to be broadcast, programs which are presented to it by SBBC during the time period specified in Attachment I hereto. The compensation to be paid to Lee for broadcasting the programs is set forth in Attachment II hereto. SBBC will maintain the ability to deliver its programming to Lee's main studio site, and Lee will cause the programming to be broadcast on its facilities.

2. **Payments/Reports.** SBBC hereby agrees to submit monthly reports to Lee on all activity including revenue, billing, expenses and collections and to pay Lee for broadcast of programs (Purchased Time) hereunder the amounts specified in Attachment II, monthly, except as there specified. Payment for programs is due and payable in full no later than ten (10) days following the beginning of each broadcast quarter. The failure of Lee to demand or insist upon timely payment shall not constitute a waiver of its right to do so.

3. **Term.** The term of this Agreement shall be for a period of one year from the effective date of this Agreement as hereinafter specified (Initial Term) provided, however, SBBC shall have the option of extending the Agreement for up to two additional one year terms.

4. **Programs.** SBBC shall furnish or cause to be furnished the artistic personnel and material for the programs specified in this Agreement and all programs shall be in good taste and in accordance with applicable statutes and Federal Communications Commission requirements. All programs shall be prepared and presented in conformity with the standards set forth in Attachment III.

5. **Handling of Mail.** Lee shall not be required to receive or handle mail, cables, telegraph or telephone calls in connection with the SBBC programs but shall be advised promptly by SBBC of any public or FCC complaint or inquiry concerning such programming and given copies of any letters from the public including complaints, concerning such programming.